Supreme Court, U.S.
FILED

01-55 JUN 2 9 2001

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No. _____

In The
Supreme Court of the United States

LEE H. LOFTIN,
Petitioner

vs.

BARBARA SPRINGER LOFTIN
Respondent

On Petition For Writ of Certiorari
To The Alabama Supreme Court

PETITION FOR WRIT OF CERTIORARI

JOHN T. FISHER, JR.
Attorney for Petitioner

LOFTIS, SKIDMORE & FISHER, P.C.
P.O. Box 1428
Tuscaloosa, Alabama 35403
Telephone (205) 344-4414
Facsimile (205) 344-4497

96 pp

QUESTION PRESENTED

Does Rule 32 of the Alabama Rules of Judicial Administration violate one's constitutional right to equal protection pursuant to the 14th Amendment of the U. S. Constitution and the Alabama Constitution, by underinclusion when providing a specific guideline and standardized method by which to compute monthly child support for only those families with combined gross monthly incomes between $550.00 and $10,000.00 yet excluding and failing to provide a specific guideline, standardized method or formula for determining child support for individuals whose combined gross monthly income exceeds $10,000.00?

LIST OF PARTIES

Lee H. Loftin - Petitioner

Barbara S. Loftin - Respondent

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PETITION FOR A WRIT OF CERTIORARI

Lee H. Loftin (hereinafter "Petitioner") respectfully petitions for a Writ of Certiorari to review the Alabama Supreme Court's decision and Order dated February 23, 2001 quashing a previously issued Writ of Certiorari to the Alabama Court of Civil Appeals and thereby denying Petitioner's Writ of Certiorari.

OPINIONS BELOW

The Certificate of Judgment of the Alabama Supreme Court issued without opinion is reprinted in Appendix A. The Certificate of Judgment of the Alabama Court of Civil Appeals is reprinted in Appendix B. The Order of the Alabama Supreme Court granting the Petition for Writ of Certiorari to the Alabama Court of Civil Appeals without oral argument is reprinted in Appendix C. The Notice from the Alabama Court of Civil Appeals overruling the Application for Rehearing is reprinted in Appendix D. The Judgment of the Alabama Court of Civil Appeals affirming the trial court's Order in the underlying litigation is reprinted in Appendix E. The Order of the Circuit Court of Tuscaloosa County, Alabama on the hearing on the Motion to Alter, Amend, or Vacate a prior Order is reprinted in Appendix F. The Order of Modification modifying the original Final Judgment from the trial court is reprinted in Appendix G. The original Final Judgment from the trial on the merits from the Circuit Court of Tuscaloosa County, Alabama is reprinted in Appendix H.

JURISDICTION

The Certificate of Judgment of the Alabama Supreme Court quashing a previously issued Writ of

Certiorari to the Alabama Court of Civil Appeals and thereby denying Petitioner's Writ of Certiorari was entered on February 23, 2001. (App. A). This Court has jurisdiction to review the Judgment of the Alabama Supreme Court by Writ of Certiorari pursuant to 28 U.S.C. § 1257 (a).

CONSTITUTIONAL PROVISIONS INVOLVED

The Fourteenth Amendment to the U. S. Constitution provides in pertinent part as follows:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. ***No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States;*** nor shall any State deprive any person of life, liberty, or property, without due process of law; ***nor deny to any person within its jurisdiction the equal protection of the laws.***"

STATEMENT OF THE CASE

Introduction. This case arises out of a divorce between Petitioner and Respondent wherein the Trial Court ultimately awarded significant assets to the Respondent, including various forms of alimony and property settlements. (App. H). The Trial Court also awarded custody of the parties' two minor children to Respondent with the requirement that Petitioner pay child support. (App. H). In awarding the child support, the Trial Court set the monthly payments at an arbitrary amount based purely on the Court's discretion. (App. H). The Trial Court was not able to utilize the mandatory, standardized calculated amounts for support provided in Rule 32 of the

Alabama Rules of Judicial Administration due to the fact that Rule 32 arbitrarily does not provide standardized monthly amounts for support when parties' combined gross monthly incomes exceed $10,000.00. The resulting monetary award of child support amounted to a substantial departure from the foundational principals behind the standardized guidelines established in Rule 32. In making such an arbitrary and unsubstantiated award, the Trial Court also departed from the constitutionally mandated guarantees of equal protection and due process.

Final Decree of Divorce. The Trial Court based its decision on ore tenus testimony of the parties and exhibits submitted. After consideration of the evidence Respondent was awarded immediate cash assets of approximately $283,320.00 and monthly periodic alimony payments over 11 years totaling $407,540.00 for a combined total of $692,860.00. Additionally, Respondent was awarded an arbitrary amount of child support from Petitioner for the two minor sons in the monthly amount of $2,988.00, or $35,865.00 annually, until the youngest minor child reached the age of majority, which amounted to a period of 125 months. Thus, the total child support award Petitioner was ordered to pay was $373,500.00. There were numerous other awards of monetary benefits not listed, which substantially increased the total amount of financial outlay from Petitioner. (App. H).

In addition to the arbitrary child support award, Petitioner was further ordered to continue to maintain two separate education trust funds with principal amounts of approximately $100,000.00 each. (App. H). These two separate education trusts were previously established for each of the two minor children to assist in paying for college tuition and expenses. The Trial Court subsequently modified the original Final Decree to allow the proceeds to be

utilized by the children for their current private school education as well as college tuition and expenses at a later time. (App. G).

The Decision of the Alabama Court of Civil Appeals. In his brief on appeal, as in all post trial motions, Petitioner argued that the award of child support was arbitrary in that child support was determined without the use of the standardized calculated amounts for support provided in Rule 32 of the Alabama Rules of Judicial Administration due to the fact that Rule 32 does not provide standardized monthly amounts for support when parties' combined gross monthly incomes exceed $10,000.00. (App. F). Petitioner argued this inequality created by the arbitrary failure of Rule 32 violated his right to equal protection. On September 17, 1999, the Court affirmed the Trial Court's Final Decree with no opinion, thereby failing to address the question of the violation of equal protection by the failure in Rule 32. (App. E).

The Decision of the Alabama Supreme Court. In his brief on appeal to the Alabama Supreme Court, Petitioner again raised the same issues as raised with the Court of Civil Appeals. The Court on February 17, 2000 initially granted Petitioner's Writ for Certiorari. (App. C). However, on February 23, 2001, the Court quashed the previously issued Writ and denied the petition. (App. A). Thus, leaving once again, the question of the violation of Petitioner's equal protection unresolved.

ARGUMENT FOR GRANTING THE WRIT

THE COURT SHOULD GRANT CERTIORARI TO ADDRESS A CASE OF FIRST IMPRESSION IN ALABAMA EXEMPLIFYING HOW THE UNDERINCLUSIVENESS OF RULE 32 OF THE ALABAMA RULES OF JUDICIAL ADMINISTRATION VIOLATES THE CONSTITUTIONALLY GUARANTEED RIGHT TO EQUAL PROTECTION OF PARENTS ORDERED TO PAY CHILD SUPPORT WHOSE MONTHLY INCOME EXCEEDS $10,000.00.

1. Rule 32 Was Created To Promote Equitable And Consistent Treatment Of Similarly Situated Persons When Awarding Child Support In All Cases Involving Child Support In Alabama.

Rule 32 of the Alabama Rules of Judicial Administration (hereinafter "Rule 32") was created and adopted in response to legislation enacted in Alabama in 1984 and 1988. (App. I). The Legislature recognized the obvious difficulties facing a trial court when attempting to fashion consistent child support awards for the myriad of cases tried in court each year. In each separate case, it is clear that while many if not all situations are different, there are numerous common factors in the expenses of families with children.

The Legislature, in an effort to assist trial courts in the calculation of child support, went to great lengths to establish a standardized guideline for the exclusive purpose of calculating child support. (App. I). The guidelines in Rule 32 were established in order to "provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar situations." (App. I).

The Committee relied on competent and nationally recognized economic models and data to create Rule 32. (App. I). The information utilized as a basis for Rule 32 was comprised of extensive economic research on the cost of supporting children at various income levels. (App. I). The Committee even went so far in its development of Rule 32 to adjust the national data to specifically address the difference between Alabama's income distribution and the U. S. income distribution. Thus, validating Rule 32 and its application in relation to child support awards. (App. I).

2. Alabama Trial Courts Must Apply Rule 32 Guidelines When Calculating Child Support.

The application of Rule 32 is mandatory in all actions filed after October 9, 1989. Thisltethwaite v. Thistlethwaite, 590 So.2d 317 (Ala. Civ. App. 1991). Thus, judges in Alabama are required to apply the guidelines in Rule 32 when awarding child support in domestic cases. The guidelines, given the thoroughness of information utilized in its compilation, create a rebuttable presumption of correctness in a child support award and are to be strictly adhered to in making such an award. Id.

In fact, a trial court may only deviate from the guidelines in Rule 32 in two limited and narrow instances. Those two instances being when the parties to an action have entered a fair, written agreement establishing a different amount of support and stating the reasons therefor, or upon a written finding on the record that application of the guidelines would be manifestly unjust or inequitable. Thistlethwaite, quoting Rule 32(A), A.R.J.A.

3. Rule 32 Is Unconstitutional Because It Is Underinclusive And Creates A Separate, Disadvantaged Class Of Parents When Seeking A Divorce Involving Child Support.

When utilizing Rule 32, it is readily apparent that the guidelines contained therein were designed to provide for two distinct needs; the legitimate economic needs of children and the need to treat similarly situated persons the same when awarding child support. When there is a case involving monthly incomes in the range of $550.00 and $10,000.00, trial court must apply Rule 32. In doing so, the parties under consideration are guaranteed they will be treated the same as all other parties in the State of Alabama who are being considered for child support awards. All persons who are similarly situated will receive the same child support result. This is one of the two fundamental premises of Rule 32; that no matter what county in Alabama you reside in, no matter what occupation you hold, no matter what your education level is, no matter what other contingency addresses any area of your life, you will be treated the same as someone else in the same or similar life situation as you regardless. As stated supra, the comments to Rule 32 expressly state this is one of the only two considerations which were given any concern in the creation of Rule 32. (App. I).

However, when creating Rule 32, there was no consideration given to providing protection to anyone whose combined monthly income happens to fall outside the guidelines. When attempting to determine a reasonable child support amount utilizing the guidelines in Rule 32, it quickly becomes apparent the guidelines address only those individuals whose combined monthly income is greater than $550.00 and less than $10,000.00. No portion of Rule 32 makes any provisions for those individuals whose monthly incomes fall outside the guidelines. Those who

happen to fall in this category outside the guidelines are offered no protection or consideration by Rule 32 as are those who fall inside the guidelines. Their fate is left solely up to the trial court.

In addition, Rule 32 provides a trial court with absolutely no assistance in crafting a child support award for those whose combined monthly income happens to fall outside the guidelines. The comments to Rule 32 suggest that a trial court issue an order to establish a minimum child support amount for combined monthly incomes less than $550.00 per month. The comments in no way provide assistance in how a court is to establish this minimum support amount. It is purely left to the discretion of the court.

Also left purely to the discretion of the trial court is the amount of child support to award in cases where the parties' combined gross monthly income exceeds $10,000.00. However, in this instance, rather than provide a guideline, or suggest setting a standard to assist in the calculation, Rule 32 prohibits the trial court from making the only common sense decision available. The comments to Rule 32 specifically state that in this instance, the trial court should not extrapolate the guidelines outward from the maximum $10,000.00, but should rather utilize its own discretion. (App. I). The comments offer no reasoning or justification for suggesting so, only the requirement that a trial court not do so.

This underinclusiveness or exclusion of those who fall in the categories outside the printed guidelines is violative of these individuals constitutional guarantee to equal protection. There is no question that uniform results are reached in every county across Alabama when the guidelines in Rule 32 are used in fashioning a child support award. Yet when the guidelines are not available, the awards are completely inconsistent, unequal, inequitable and unjust.

In a cursory review of numerous cases in

Alabama, it becomes glaringly apparent that trial courts are all over the scale when ordering child support without the benefit of the guidelines in Rule 32. The case of Wallace v. Wallace, 2000 WL 378159 (Ala. Civ. App. 2000), is a case similar to the Petitioner's in many instances, including the following: the Husband was a physician whose Wife had assisted him by working as a licensed physical therapist and supplementing the family income through the Husband's last year of medical school. The Husband eventually purchased an interest in an existing medical practice in Alabama and located the family there. At the time of the divorce, the Wife maintained her physical therapist license but had not worked in approximately 13 years. There were two minor children, both of whom attended a private school. The property settlement in the case was also similar in that substantial assets were awarded to the Wife from the Husband's estate. Wallace v. Wallace, 2000 WL 378159 (Ala. Civ. App. 2000)

In Wallace, the Court determined the Husband's annual income to be $500,000.00. This annual income placed the Husband outside the Rule 32 guidelines for the trial court's determination of child support. Using its discretion, the trial court awarded the Wife child support in the monthly amount of $2,500.00. Included in the trial court's consideration is assumedly the cost of the private school education, which would arguably reflect a significant need of the two children.

In the Petitioner's case, the trial court ordered a monthly child support award of $2,988.00. This is a 20% variation from the award in Wallace. What makes the awards even more inconsistent than the 20% variation is the fact that the Husband's income in Wallace was over two times that of the Petitioner's at the last consideration of child support. Additionally, unlike the Husband in Wallace, the Petitioner's two children have an education trust fund for each in the

separate approximate amounts of $100,000.00. The proceeds from these two trusts are to be utilized to pay for the private school tuition and expenses of the two children. (App. G). When considering these, the difference between the two awards takes on an even greater inconsistency.

Wallace is only one example of many where individuals with incomes outside the guidelines received extremely inconsistent child support awards when compared with others similarly situated, i.e. outside the guidelines of Rule 32. In Glazner v. Glazner, 2001 WL 498964 (Ala. Civ. App. 2001), only one party worked outside the home and the monthly income exceeded the guidelines of Rule 32. Competing expert testimony placed the Husbands monthly income between $18,916.00 and $31,053.00.

The trial court, when considering the reasonable needs of the two minor children and the Husband's monthly income, made an initial child support award of $2,500.00. After post-trial motions to modify the Final Decree, the trial court reduced the monthly child support award to $1,800.00, a $700.00 difference from its initial award. Given the similarities with the Petitioner's case, this again represents a grossly inconsistent result in that the child support award in Glazner represents a 40% difference, less than the child support award in the Petitioner's case.

4. Federal Sentencing Guidelines Properly Include Sentencing Guidelines For All Federal Crimes, Unlike The Arbitrary And Capricious Income Exclusion Or Underinclusion Contained In Rule 32.

Rule 32 guidelines are analogous to the Federal Sentencing Guidelines for crimes prosecuted in the federal system. From a review of the policy statement contained in the Federal Sentencing Guidelines, 18

U.S.C.S. Appx. §3 (2001), it is clear that equal protection of similarly situated individuals was one of the few foundational goals and considerations of the Sentencing Guidelines just at it was in Rule 32. (Appx. K).

It is undisputed from reviewing the Sentencing Guidelines that they apply in all federal crimes. These guidelines make provisions for sentencing in all crimes except those extremely few, rare crimes where there is little or no data to utilize in the development of a standard. 18 U.S.C.S. §5 (2001). Thus, it is guaranteed that when one is sentenced pursuant to the commission of a crime prosecuted in the federal system, an individual will be treated virtually the same as one similarly situated in the same system. (App. J, K).

In some cases the Sentencing Guidelines make allowances for rare and unusual instances which need specific attention. (App. J). The Sentencing Guidelines addresses such atypical situations by allowing the sentencing court to depart from the mandatory guidelines and sentence outside the prescribed range. In this case the court must specify on the record the reasons for the departure. 18 U.S.C.S. Appx. §2 (2001), citing 18 U.S.C. 3553(b). This creation of the reasons for departure on the record allows for the appropriate review of the departure from guidelines whenever challenged.

Much like the Sentencing Guidelines, the guidelines in Rule 32 also set a uniform standard for addressing child support awards in divorces. Rule 32 also allows for the deviation from the rule in two limited instances mentioned previously. The one instance most like the Sentencing Guidelines is where the trial court sets the award by utilizing the rule and determines, due to special circumstances, the award pursuant to Rule 32 would be unjust or inequitable. Thisltethwaite v. Thistlethwaite, 590 So.2d 317 (Ala. Civ. App. 1991). However, this can only be done after

a finding of such on the record, much like the Sentencing Guidelines. This also allows the trial court the opportunity to clearly establish the unjust or inequitable result in applying Rule 32 guidelines and substantiate its reasons for deviation. Thisltethwaite (Ala. Civ. App. 1991). This allows for the appropriate result should the deviation be challenged. Bennett v. Brainard, 623 So.2d 340 (Ala. Civ. App. 1993).

The above mentioned aspects of the Federal Sentencing Guidelines and Rule 32 guidelines are where the two end in similarity and diverge significantly. It is clear that the Sentencing Guidelines apply to all crimes in the federal system. However, in stark contrast, it is also plain to see that Rule 32 does not apply to all divorces involving child support in Alabama. (App. I). As discussed previously, Rule 32 applies only to a certain exclusive group of individuals, while unconstitutionally excluding another innocent group.

The Federal Sentencing Guidelines were created with the intention of treating similarly situated offenders the same or equally when in the federal criminal system. In doing so, they address all crimes, rather than a certain arbitrarily selected number of crimes or certain arbitrarily selected number of offenders. It can only be said that the drafters of the Sentencing Guidelines knew that undertaking such a project required the consideration of all offenders in all crimes, not only a randomly selected number of the same.

To have stopped short of the whole, and not embraced the entire federal criminal system, would have been unconstitutional. If the commission had only addressed a limited number of crimes rather than all in the system, they would have opened up a floodgate of constitutional federal litigation like never before. Such an action could not have been deemed constitutional or rationally related to any legitimate state interest as evidenced by the pure fact that a

guideline was devised to encompass the entire system.

Thus, the Federal Sentencing Guidelines, unlike Rule 32, properly address all crimes in the federal system, not just an arbitrarily determined, hand selected amount of crimes, thereby creating preferential treatment for some crimes while leaving other crimes outside the protection of the Sentencing Guidelines purely to the arbitrary discretion of a trial court.

5. Providing A Simple Formula At The End Of The Printed Guideline Amounts In Rule 32 Consistent With The Maximum Printed Child Support Increments Would Provide A Standard Formula To Address All Incomes That Exceed The Printed Guidelines And Avoid Future Unjust And Inconsistent Awards As In The Present Case.

Rule 32 establishes that the maximum monthly support amount for two children at $10,000.00 of combined monthly income is $1,542.00. (App. I.). In fact, from $9,000.00 to $10,000.00, the incremental increase in support for each $100.00 incremental increase in combined monthly income is $7.00. It would be entirely practical and most commonsensical for the guidelines to continue to add $7.00 per $100.00 of income for all combined monthly incomes in excess of $10,000.00. This would easily establish a formula for standardizing the support after the printed guidelines ended. This is however, exactly what the current comment to Rule 32 prohibits. (App. I).

In the present case, Petitioner was ordered to pay $2,988.00 per month for child support. If the guidelines in Rule 32 were projected forward using the $7.00 incremental increase per $100.00 incremental increase in income, Petitioner's child support award would have increased from the maximum printed amount by $700.00 based on his monthly income being $20,000.00. (App. G). Thus, Petitioner's total

child support payment should have been $2,242.00. This is an approximate 25% reduction in the actual child support amount ordered by the trial court. As a result, when extended over the payment term of 125 months, Petitioner will be taxed an additional $87,500.00 for child support based on the arbitrarily exercised discretion of the trial court whereas if the guidelines had been able to be considered this result would not have been reached.

Rule 32 is not inflexible in that is allows for deviation from the guidelines in special cases. This is sometimes utilized to address special needs and make appropriate awards accordingly. Even in the Petitioner's case, if the trial court felt there were special needs, which required an additional monetary award, the trial court could have ordered such. This is exactly what is done for those whose income falls within the guidelines. It should also apply for those outside the guidelines. However, in the present case, there is no finding of special needs on the record and no such additional award is warranted.

6. Even The Least Restrictive Rational Basis Scrutiny Can Not Save The Unconstitutional Application of Rule 32.

Petitioner understands this Honorable Court has traditionally refrained from involving itself in cases of statutory regulation of domestic relations. Sosna v. Iowa, 419 U.S. 393 (U.S. 1975). However, unlike Sosna, this case does not involve the right of the State to prescribe the conditions for marriage and the causes for which one may be dissolved. Id. This matter is about the arbitrary and capricious exclusion and discrimination against a distinct group of individuals when considered for child support while divorcing. Therefore, this matter is entirely proper for this Court.

The Equal Protection Clause of the U. S. Constitution provides a basis for challenging classifications that treat one group of persons as inferior or superior and for contending that general rules are being applied in an arbitrary or discriminatory manner. Jones v. Helms, 452 U.S. 412 (U.S. 1981). Moreover, the Equal Protection Clause establishes the fundamental principle that a State must govern impartially. . Jones (U.S. 1981), quoting New York City Transit Authority v. Beazer, 440 U.S. 568 (U.S. 1979). Thus, general rules that apply evenhandedly to all persons within the jurisdiction must unquestionably comply with this principle. Id.

In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights is subject to "rational basis" scrutiny. Thus, such a classification must be upheld against an equal protection challenge only if any reasonably conceivable state of facts could provide a rational basis for the classification. Federal Communications Commission and United States v. Beach Communications, Inc., 508 U.S. 307 (U.S. 1993).

In the present case, Petitioner was excluded from the consistent treatment of similarly situated individuals envisioned by the standard guidelines in Rule 32 and therefore excluded from this consistent treatment guaranteed therefrom. This exclusion was based solely on the fact that Petitioner's gross monthly income fell outside the uppermost limit of the printed guidelines in Rule 32. Rule 32 has created an economically disadvantaged class of individuals in those who have arbitrarily been excluded from the application of the guidelines in Rule 32. Thus, rather than being given the same protection as those similarly situated individuals whose incomes fall within the guidelines, the Petitioner was unconstitutionally subjected to the pure discretion of the trial court with no guidance or assistance from

Rule 32.

While this may seem harmless at first, it is in fact tremendously harmful when considering the economic impact inflicted on Petitioner and others as unfortunate as he. When reviewing other individuals similarly situated to Petitioner as shown supra, it is clear there is absolutely no way for trial courts all over the State of Alabama to provide for fair and consistent treatment of individuals who are unfortunate enough to have their monthly incomes which fall outside the printed guidelines. Each trial court's discretion is not the same and can not and will not conceivably reach the same result for all persons similarly situated throughout the entire State.

When the State of Alabama recognized the appropriateness of creating Rule 32 to guarantee equitable and consistent treatment of similarly situated persons in Alabama in child support awards, it should have provided for all its citizens rather than an arbitrarily selected number of them. There is absolutely no justifiable reason, rationally related or otherwise, for creating an arbitrary cut off of monthly income of $10,000.00 in the printed guidelines.

The trial court in its own Order stated that this circumstance presented by Rule 32 and the argument made by Petitioner of Rule 32's unconstitutionality was tenable, thereby recognizing and giving validity to the unconstitutionality of Rule 32's application. (App. F (5)). However, the trial ignored the unconstitutional application of Rule 32 and simply adhered to an established line of behavior created by the appellate courts in Alabama, no matter how wrong such behavior may be.

There is no governmental benefit, interest or justification anyone can assert to support such an action. If the Petitioner's case were to be decided in 10 different counties in Alabama, there would be 10 vastly different child support awards in each case. This is solely because his monthly income fell outside

the printed guideline amounts in Rule 32. However, if Petitioner's income fell inside the printed guidelines in Rule 32, 10 different counties would produce substantially the same result in the same 10 cases. For these varying situations there is no rational reasoning.

Further, it can not be said that such arbitrariness and capriciousness and the results therefrom can in any way be related to any legitimate state interest to withstand such a constitutional challenge as this. One may attempt to argue the needs of children of higher income families against the needs of children of those with lower incomes, however this is futile. No one can prove, or assert with a straight face, that the needs of a child with a combined monthly family income of $10,000.00 is any different than that of a child with a combined monthly family income of $10,100.00. However, under Rule 32, the latter would be subjected to a much different standard when being considered for child support. Such a distinction is purely arbitrary and capricious and renders nothing but inequitable and unconstitutional results.

One of the only possible reasons someone could assert is that it would be impossible to create a printed guideline for an infinite amount of monthly incomes. While this is an argument in favor of such an arbitrary cutoff, it is a hollow argument at most. Absolutely nothing would prevent the drafters of the guidelines from making a calculated formula to address standardizing guideline amounts for combined monthly incomes in excess of $10,000.00 in lieu of printing an actual table for an infinite number of incomes. Having such a formula to provide for the consistent treatment of those outside the guidelines just as those inside the guidelines enjoy is only just and practical and can no longer be ignored within the State of Alabama.

CONCLUSION

Rule 32 of the Alabama Rules of Judicial Administration is good and necessary in theory, but unconstitutional in practice. There is absolutely no justification or rationally related legitimate state interest in making such a disadvantaged class individuals by the creation of an arbitrary cutoff of monthly incomes considered in Rule 32. Rule 32 and its mandatory application in all child support cases in Alabama should make standardized guidelines for application to all individuals in Alabama, regardless of income.

In seeking the promulgation of Rule 32, the State of Alabama has undertaken a duty to create guidelines in the area of child support awards. When exercising such a duty where none previously existed, the State of Alabama must create a rule that treats all under it with impartiality. Thus, the guidelines in Rule 32 cannot be created in such a manner to apply in an arbitrary and discriminatory manner. However Rule 32, by its unfounded underinclusion; the arbitrary denial of protection to those with incomes outside the guidelines, is not evenhanded legislation that applies equally to all. It in fact creates a separate and distinct class of individuals who are unjustly disadvantaged by the application of Rule 32.

Once the State sought to act in the creation of Rule 32, it had a duty to ensure that all persons similarly situated would be treated the same by the application of the rule. However, due to the arbitrary and capricious exclusion of individuals whose combined incomes exceed $10,000.00 per month, Rule 32 is not applied fairly to guarantee equal treatment of all similarly situated individuals in child support awards. There is no justification for such action. In addition, there is no rationally related, legitimate state interest which can be asserted to make the arbitrary

and unconstitutional application as Rule 32 valid.

For all these foregoing reasons, Petitioner respectfully requests that this Honorable Court grant this Petition for Writ of Certiorari.

Respectfully submitted,

John T. Fisher, Jr.
Attorney for Petitioner

LOFTIS, SKIDMORE & FISHER, PC.
1406 22nd Avenue
P. O. Box 1428
Tuscaloosa, Alabama 35403
Telephone (205) 344-4414
Facsimile (205) 344-4497

APPENDIX A

IN THE ALABAMA COURT OF ALABAMA

February 23, 2001

1990298

Ex parte Lee H. Loftin. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Lee H. Loftin v. Barbara Springer Loftin) (Tuscaloosa Cir.Ct.No.: CV-96-642.01) (Low'r.App.Ct.No.: 2980686)

CERTIFICATE OF JUDGMENT

Whereas, on February 17, 2000, a writ of certiorari to the Court of Civil Appeals was granted by this Court, and the cause was set down for submission pursuant to Rule 39, Alabama Rules of Appellate Procedure,

WHEREUPON, come the parties and the petition for writ of certiorari being submitted and duly examined and understood by the court, it is considered by the Court that the writ heretofore issued should be quashed and that the petition should be denied.

IT IS, THEREFORE, CONSIDERED AND ORDERED that the writ of certiorari heretofore issued to the Court of Civil Appeals be, and the same is hereby, quashed, and the petition for writ of certiorari be, and the same is hereby, denied. NO COSTS TAXED. NO OPINION.

JOHNSTONE, J. –Moore, C.J., and Houston, See, Lyons, Brown, Harwood, Woodall, and Stuart, JJ., concur.

JOHNSTONE, J. –Moore, C.J., and Houston, See, Lyons, Brown, Woodall, and Stuart, JJ., concur; Harwood, J., recuses himself.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 23rd day of Feb., 2001.

S/Robert G. Esdale
Clerk, Supreme Court of Alabama

APPENDIX B

IN THE ALABAMA COURT OF CIVIL APPEALS

Civil Appeals Case 2980686

Lee H. Loftin

v.

Barbara Springer Loftin

Appeal from Tuscaloosa County Circuit Court
(DR 96-642.01)

[Filed September 17, 1999]

CERTIFICATE OF JUDGMENT

The appeal in this cause having been duly submitted, IT IS CONSIDERED, ORDERED, AND ADJUDGED that the judgment of the court below is affirmed.

IT IS FURTHER ORDERED that the costs of appeal are taxed against the appellant(s) and sureties as provided by Rule 35, Alabama Rules of Appellate Procedure.

IT IS FURTHER ORDERED that the parties' requests for an attorney fee are denied.

Witness, John H. Wilkerson, Jr.
This 17th day of September, 1999
s/ John H. Wilkerson., Jr
Clerk
Court of Civil Appeals
State of Alabama

February 23, 2001

Petition for writ of certiorari filed in Supreme Court 11-10-99; granted 2-17-00; quashed and denied 2-23-01. This certificate of judgment is transmitted this date.

s/John H. Wilkerson, Jr.

APPENDIX C

IN THE SUPREME COURT OF ALABAMA

February 17, 2000

1990298

Ex parte Lee H. Loftin. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS (In re: Lee H. Loftin v. Barbara Springer Loftin) (Tuscaloosa Cir.Ct.No.: CV-96-642.01) (Low'r.App.Ct.No.: 2980686)

ORDER

IT IS ORDERED that the petition for writ of certiorari to the Court of Civil Appeals is granted and oral argument denied .See Rule 39(f), Alabama Rules of Appellate Procedure, for instructions regarding the filing of additional briefs.

PLEASE USE THE ABOVE CASE NUMBER ON FILINGS IN CONNECTION WITH THIS CASE.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 17th day of Feb., 2000.

s/ Robert G. Esdale, Sr.
Robert G. Esdale, Sr.
Clerk, Supreme Court of Alabama

APPENDIX D

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: 2980686

Lee H. Loftin

v.

Barbara Springer Loftin

Appeal from Tuscaloosa County Circuit Court
(DR 96-642.01)

October 29, 1999

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing. 39(k) Motion Denied.

s/John H. Wilkerson, Jr.
John H. Wilkerson, Jr., Clerk
Court of Civil Appeals

Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741
(334) 242-4095

APPENDIX E

STATE OF ALABAMA
JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEALS
SPECIAL TERM, 1999

September 17, 1999

2980686

Lee H. Loftin
v.
Barbara Springer Loftin

Appeal from Tuscaloosa Circuit Court
(DR-9G-G42.01)

CRAWLEY, Judge

AFFIRMED. NO OPINION

See Rule 53 (a) (1) and (a) (2) (F), A.R.App.; Ala. Code 1975, § 6-6-227; Osborn v. Osborn, 628 So. 2d 785 (Ala. Civ. App. 1993); and Boudreaux v. Boudreaux, 550 So. 2d 1039 (Ala. Civ. App. 1989).

The parties' requests for an attorney fee on appeal are denied.

Robertson, P.J. and Yates, Monroe, and Thompson, JJ., concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 17th day of Sept., 1999.

s/ John H. Wilkerson, Jr.
John H. Wilkerson, Jr.
Clerk, Court of Civil Appeals of Alabama

APPENDIX F

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

In Re: The Matter Of

Lee H. Loftin

vs.

Barbara Springer Loftin

Case No. DR-96-642.01

ORDER

This matter having come before the Court on February 9, 1999 for a hearing on Plaintiff's Motion to Alter, Amend or Vacate the judgment of the Court entered in this matter on September 28,1999 Plaintiff's Amended Motion to Alter, Amend or Vacate Judgment, Plaintiff's Motion for Clarification, and all other pending matters; and

There being present in Court Plaintiff, Lee H. Loftin, with attorney, Hon. Charles R. Malone, and Defendant, Barbara Springer Loftin, with her attorney, Ron. Stephen R. Arnold; and

The Court having considered the pleadings, the arguments of counsel, and having further reconsidered the testimony presented in trial of this matter,

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

(1) In open Court, and after extensive discussion with the attorneys for the parties, the Court executed an Order clarifying Paragraph 14 of the original Final Judgement of Divorce. Said provision divided Plaintiff's interest in the pension plan of Tuscaloosa Ear, Nose & Throat, P.C. The order of clarification clearly established that the effective date of the division of said pension plan was intended to be the date of the filing of the Complaint for Divorce which is July 24, 1996.

The Court understands that the attorney for the Defendant will now be preparing a modified qualified domestic relations order to be sent to the plan administrator for purposes of the division of the plan.

(2) Plaintiff, in his motion to alter, amend or vacate, has asserted that the Court erred in the Order of Modification entered September 28, 1998 by failing to reduce the amount of alimony and child support he pays to Defendant, and further by ordering him to pay a portion of Defendant's attorney's fees for representation in this matter.

(3) Plaintiff filed an amended motion to alter, amend or vacate asserting that the "...application of the Rule 32 A.R.J.A. Child Support Guidelines is unconstitutional and manifestly unjust because of its unequal treatment of individuals with monthly income of $10,000 or more, and because it is arbitrary and capricious."

(4) Based upon the mutual consent of the parties, the time for this Court to consider and rule upon the pending post trial motions was extended through March 1,1999 by order entered January 15, 1999.

(5) Plaintiff argues that the current state of Alabama case law concerning factors to be considered in determining child support when the gross income of the parents exceeds the uppermost limits of the guidelines established by Rule 32 A.R.J.A. unconstitutionally omits as a factor what the child support should be if the guidelines were extrapolated up to the actual income of the parties. While this argument is unique and well presented by counsel for Plaintiff (and not altogether untenable), the Court declines Plaintiff's invitation to make new law and modify the rules firmly established by the Alabama Supreme Court and the Alabama Court of Civil Appeals. The guidelines for the Court to consider are well established. See Brasfield v. Brasfield, 679 So. 2d 1091 (Ala. Civ. App. 1996). This Court endeavored to follow those guidelines in the original establishment of Plaintiff's child support obligations. Furthermore, this Court has endeavored to follow those guidelines, along with the guidelines established for modification cases, when considering Plaintiff's post divorce petition for downward modification.

(6) After careful reconsideration of the evidence presented at trial, especially in light of counsels' arguments, the Court hereby denies Plaintiff's requests for further downward modification of the amount of child support he is obligated to pay as set out in the Court's Order of Modification entered September 28, 1998.

(7) Furthermore, after careful reconsideration of the evidence presented at trial, the Court hereby denies Plaintiff's requests for further downward modification of the amount of periodic alimony he is obligated to pay as set out in the Court's Order of Modification entered September 28, 1998.

(8) The Court, upon further reflection, does however agree with the Plaintiff with regard to the issue of awarding Defendant an attorney's fee for representation in this matter. Therefore, paragraph 6 of the Order of Modification entered by this Court on September 28, 1998 is hereby modified to read as follows: "Each party shall pay his or her own attorney's fees and expenses incurred in this matter."

(9) The Court has reviewed the evidence presented at trial on May 20, 1998 and has determined that it inadvertently failed to address the issue regarding the payment of taxes on monies earned by the parties' minor children due to their individual trust funds. The Court understands that Defendant has been personally paying income taxes on the earnings of the children's Uniform Gifts to Minors accounts. Defendant argues that she should not be required to personally bear the tax burden for these accounts. Plaintiff argues that Defendant should pay the taxes on these funds because she receives the dependency exemptions for income tax purposes pursuant to Rule 32 A.R.J.A. The Court can find no basis for Defendant to be required to pay the taxes on the children's separate estates merely because the law gives her the right to claim the children for tax purposes.

The Court hereby determines that the taxes on the income earned by the children's separate estates shall be paid out of the funds of said separate estates. Based upon the current information provided to the Court, Defendant shall have no liability for the payment of said taxes

(10) Defendant has requested that the Court order the Plaintiff to provide to her an annual

accounting of the use of the children's educational trusts. The Court finds that it would be unreasonable to require Plaintiff to provide a full accounting of said funds. However, the Court finds that Defendant should be informed as to the amount remaining in said trusts. Therefore, Plaintiff shall provide, on or before April 15th of each year, to Defendant documentation of the current balance in each of the children's educational trusts.

(11) Defendant's request to modify paragraph 3.1 of the Order of Modification is hereby denied.

(12) Except as herein modified, all provisions of the Order of Modification shall remain in full force and effect and unchanged.

DONE this the 17th day of February, 1999.

s/ Philip N. Lisenby
Philip N. Lisenby
Circuit Judge

Original – Court file

Hon. Charles R. Malone
Attorney for Plaintiff

Hon. Stephen R. Arnold
Attorney for Defendant

APPENDIX G

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

In Re: The Matter Of

Lee H. Loftin
SS# 422-74-0305

vs.

Barbara Springer Loftin
SS# 423-60-6753

Case No. DR-96-642.01

[Filed September 28, 1998]

ORDER OF MODIFICATION

This matter having come before the Court for trial on May 20, 1998 on Defendant's Petition to Modify, Plaintiff's Counter Petition for Modification and Rule to Show Cause, and Defendant's Counter Petition for Rule Nisi; and

There being present in Court for trial the Defendant, Barbara Springer Loftin (also referred to as "Wife") with her attorney, Hon. Stephen Arnold, and the Plaintiff, Lee H. Loftin (also referred to as "Husband"),with his attorney, Hon. Charles R. Malone; and

The Court having considered the pleadings, the evidence presented, including the testimony of the parties and other witnesses, and the stipulations of the parties, the Court hereby makes the following findings and enters the following orders of modification:

1. The parties were divorced by judgment of this Court entered October 20, 1997 after a trial (actual testimony in which was concluded on June 10, 1997).

2. Defendant filed her present petition to modify on November 20, 1997, seeking a modification of the custodial arrangement and other relief. Plaintiff filed an answer and counter petition for modification. Plaintiff, in part, requested a modification of the prior property settlement provisions. Said provisions are not modifiable according to Alabama law. Additionally, Plaintiff sought other modifications of child support, periodic alimony and other such matters. Plaintiff also sought to have Defendant pay a portion of his attorney's fees. Defendant filed a counter petition for rule nisi, alleging that Plaintiff had failed to make certain payments of periodic alimony and child support as ordered in the divorce decree.

3. At trial the parties entered into certain stipulations regarding custody of the parties' minor children. Those stipulations are hereinafter incorporated into this order.

4. Also, at trial, the parties stipulated that Defendant's contempt claims regarding Plaintiff's failure to pay periodic alimony and child support were moot.

5. The Court finds from the evidence presented that there has been a material change in circumstances since this Court's final judgment of divorce dated October 20, 1997 (hereinafter referred to as the "Final Judgment") to warrant certain modifications as

hereinafter set out. The Court specifically finds that Plaintiff has suffered some diminution of income. The Court further finds, however, that the needs of the Defendant and the minor children have remained the same or have slightly increased. The Court further that the modifications regarding maintenance of life insurance and the allowance of the children's trust funds to be utilized for the payment of educational expenses, including private school tuition, should provide Plaintiff with sufficient relief to be able to maintain the payments for child support and periodic alimony as previously ordered. According to Plaintiff's testimony, he still has approximately $20,000.00 per month gross income from his employment alone.

ORDER

1. CUSTODY

1.1 Paragraph 3 of the Final Judgment is hereby modified as follows: That the Wife shall have the exclusive care, custody, and control of the parties' minor children, namely, John Peterson Loftin, born March 28, 1989, and James Edward Andrew Loftin, born May 28,1985. For the purposes of determining medical and educational needs of the children, the parties shall endeavor to reach mutually agreeable decisions. In the event the parties cannot reach a mutually agreeable decision, then the Husband shall have the primary responsibility for determination of these factors.

1.2 Each party shall have equal access to all school and/or other official records or documentation, including report cards, and other documents relating to the health, education, and welfare of the children. Each parent shall have the right to discuss the children's medical conditions with their doctors and shall have the

right to participate in school activities for the children, including the right to have lunch with the children at school once a week, and to discuss their progress in school with their teachers. Each parent shall keep the other informed as to any significant illness or injuries sustained by the children, and shall notify the other as soon as possible if any child is admitted to the hospital or receives emergency treatment. Each parent shall keep the other reasonable informed as to location of the children, including plans for extended trips outside of the state, and the children shall be kept generally available for telephone communication at all reasonable times.

2. CHILD SUPPORT

2.1 The amount of child support to be paid by Husband to Wife shall remain unchanged from the Final Judgment.

2.2 Since the Husband is self employed, the payments shall be by automatic monthly bank transfer from Husband's bank account to any bank account so designated by the Wife.

2.3 Each minor has available a trust fund in the approximate amount of $95,000 each and these funds shall first be used for all tuition and required fees as charged by the private school the minor children are attending. In the event either trust funds fails to pay for any reason, then the Husband shall become obligated to pay for all tuition and required fees as charged by the private school the children are attending.

3. CHILDREN'S COLLEGE EDUCATION

3.1 Paragraph 7 of the Final Judgment is hereby modified to read as follows: The children's trust funds shall first be used for payment for their college

education. The trust shall first be obligated to pay 100% of the tuition, room and board, fees, books, and expenses of undergraduate college education for the minor children. In the event the trust fund should fail to pay for the minor children's college education, then the Husband shall be responsible for 100% of tuition, room and board, fees, books, and expenses of undergraduate college education for the minor children. This obligation shall be in compliance with Bayliss and the obligations are limited to four years of state college expenses and the requirement that the children maintain at least a "C" average.

3.2 The Wife shall insure that the Husband receives children's grades and other academic progress reports, as well as copies of all invoices, bills, statements, and reflecting the required financial contribution. The Husband shall be responsible for forwarding this information to the Trustee of the children's trust funds.

4. INSURANCE

4.1 Paragraph 18 of the Final Judgment is hereby modified to read as follows: The Husband shall provide life insurance on his life and pay all premiums due thereon to keep in full force and effect policy or policies naming the children or trust for the benefit of the children, as irrevocable beneficiaries thereon in the amount of $175,000 for each child. The Husband shall have the right to create trust funds for the insurance he is required to carry under this order or transfer existing life insurance policies into such trust, whether in effect now or hereafter created, so as to allow the Husband to minimize his estate and gift tax liabilities. The husband shall have the obligation to maintain said life insurance policies naming the children as irrevocable beneficiaries or any trust created for the children for so long as he is required to pay child support or other post secondary

education for each child. In the event the Husband should fail to provide said life insurance as ordered or should said life insurance lapse, then the equivalent amount shall be charged against the Husband's estate in favor of the children. Any such trust utilized by the Husband for said insurance must allow the trustee to utilize the funds for the current needs of the parties' children.

4.2 Paragraph 19 of the Final Judgment is hereby modified as follows: The Husband is to provide life insurance on his life and to pay all premiums due thereon to keep in full force and effect policy or policies naming the Wife as irrevocable beneficiary thereon in the amount of $200,000. The Husband shall be required to maintain said insurance until such time as he is no longer legally obligated to pay period alimony.

5. PERIODIC ALIMONY

The provisions for periodic alimony as set out in the Final Judgment shall remain in full force and effect, and unchanged.

6. ATTORNEY'S FEES

Husband shall pay to Wife or Wife's attorney the sum of $1,000.00 representing a portion of Wife's attorney's fees incurred in this matter in defense of Husband's claim for a reduction in child support. Wife is hereby awarded a judgment in said amount against Husband. Husband shall pay shall judgment in full within 30 days from the date of this order.

7. MISCELLANEOUS

All other provisions of the Final Judgment of Divorce dated October 20, 1997, except as modified herein, shall remain in full force and effect and

unchanged.

8. COURT COSTS

The Court costs in this matter are taxed as paid.

DONE AND ORDERED this the 28th day of September, 1998.

s/ Philip N. Lisenby
Philip N. Lisenby
Circuit Court Judge

cc: Original – Court File

Hon. Charles R. Malone
Attorney for Plaintiff

Hon. Stephen R. Arnold
Attorney for Defendant

APPENDIX H

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

In Re: The Matter Of

Lee H. Loftin
SS# 422-74-0305

vs.

Barbara Springer Loftin
SS# 423-60-6753

Case No. DR-96-642.01

[Filed October 20, 1997]

FINAL JUDGMENT

This matter having come before the Court for trial Plaintiff's Complaint for Divorce and Defendant's Answer Counter-claim on the 23rd, 24th, and 25th days of April, 1997; the 10th day of June, 1997; and was submitted to the Court determination on August 27, 1997 when the Defendant decided not to submit additional evidence pursuant to this Court's order of August 13, 1997; and

There being present in Court sometimes hereinafter referred to Plaintiff, Lee as "Husband" H. Loftin with attorney, Hon. Donna W. Smalley, and Defendant, Barbara Springer Loftin (sometimes hereinafter referred to as "Wife"), with her attorneys,

Hon. Kathryn McC. Harwood and Hon. Stephen R. Arnold.

Based on all of the evidence, including ore tenus testimony of parties and the exhibits admitted, the Court enters the following Order.

IT IS ORDERED, ADJUDGED, AND DECREED as follows:

1. The bonds of matrimony heretofore existing between the Lee H. Loftin, and the Defendant, Barbara Springer Loftin, be and the same are hereby dissolved, and the said Lee H. Loftin is forever divorced from the said Barbara Springer Loftin, for and on account of incompatibility irretrievable breakdown of the marriage of temperament .

2. The Plaintiff, Lee H. Loftin, and the Defendant, Barbara Springer Loftin, are hereby permitted to again contract marriage but not Judgment, until after sixty (60) except to each other; days from the entry of this and if an appeal is taken within forty-two (42) days from the date hereof neither the Plaintiff nor the Defendant shall marry again, pendency of this appeal .

3. <u>CHILD CUSTODY</u>:

The Husband and Wife shall have joint custody of the minor children of the parties, namely, John Peterson Loftin (born March 28, 1989) and James Edward Andrew Loftin (born May 28,1985). The Wife shall be the primary physical custodian. For purposes of determining medical and educational needs of the children, parties shall endeavor to reach mutually

agreeable decisions. In the event the parties cannot reach a mutually agreeable decision, then the Husband shall have determination of the same.

4. VISITATION:

The Husband shall have visitation with the children every other weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday and all other reasonable and liberal visitation to which the parties may agree from time to time, with a minimum as follows:

A. The children will be with the Father and Mother respectively on Father's Day weekend and Mother's Day Weekend from 6:00 p.m. Friday until 6:00 p.m. Sunday, regardless of whose weekend it otherwise would be. They shall begin alternating again the next weekend.

B. The Father shall have the right to have the children for one week at Christmas from 2:00 p.m. on December 25 until 2:00 p.m. on January 1, or to a different but agreed upon schedule which allows significant time with both parents.

C. Each party shall have the right to be with the children for at least two hours on each child's birthday, even if the children are scheduled to be with the other parent on their birthday.

D. The children shall spend each parent's birthday with that parent, to the extent such is possible without undue disruption of the children's schedule.

E. The parties are directed to alternate Thanksgiving and Easter holidays, with the Mother having odd years and the Father having even years, for the entire weekend, regardless of whose weekend it would otherwise be, and with alternating beginning again the next weekend. Thanksgiving will be defined as beginning Wednesday at 6:00 p.m. and ending Sunday at 6:00 p.m., unless the parties agree otherwise.

F. In the event of any conflict between the holiday or special visitation periods and the regular weekend or weekday visitation, the holiday visitation will be followed. Under no circumstances may either party have the children for more than two consecutive weekends without the other party having an opportunity to visit with the children.

G. The Father will have the right to have the children for at least two separate periods of fourteen (14) consecutive days in the summer so as to have the children on vacation. These weeks should include two of his weekends, and should be scheduled at least 30 days in advance, in writing, to avoid conflicts.

H. The parties shall alternate Spring Break vacation with the children, such that the Father shall have the week on even years, and Mother having them during odd years, unless the parties agree otherwise.

I. Both parties shall refrain from disparaging remarks or inappropriate statements concerning the other parent in the presence of the children, and shall foster the love and respect for each parent while in presence of the other. Both parents shall respect their children's preferences and plans, and work toward reasonable accommodations of the children's schedules, when necessary, in implementing visitation.

J. Each parent is ordered to support and encourage the relationship of the other with their children. Neither shall criticize the other, nor shall one parent undercut or call into question the parental authority of the other. Each parent shall use his or her best efforts to support and coordinate mutual policies on discipline, personal habits and other matters involving their children and to insure as best as possible that the home environments of the parties each provide a consistent and healthy site for child rearing. The parties shall recognize the right of the other to be involved in and to participate in decisions affecting the children and in that regard, each parent shall access to school and medical records of the children.

K. Neither parent shall allow any person of the opposite sex, to which he or she is not married or related by blood, to remain overnight or to late hours of the

night in his or her residence or other place where he/she may be staying, when minor children are present.

5. CHILD SUPPORT:

The Husband shall pay to the Wife the sum of TWO THOUSAND NINE HUNDRED EIGHTY-EIGHT Dollars ($2,988.00) per month for the support and maintenance of the minor children. The payments shall begin on November 1, 1997 and continue on the lst day of each month thereafter until the youngest child attains the age of majority. In addition to the monthly child support, the Husband shall pay and be responsible for all tuition and required fees as charged by the private school attended by the children.

The income of the parties exceed the maximum amounts under Rule 32 ARJA. Therefore, the Court has carefully considered the needs of the minor children and the parties' ability to pay in the calculation of the child support amount.

Since Husband is self-employed, the payment shall be by automatic monthly bank transfer from Husband's bank account to any bank account so designated by the Wife.

6. TAX DEPENDENCY EXEMPTION:

In accordance with the Alabama Child Support Guidelines, the Wife shall have the dependency exemptions on the minor children. Each party is ordered to execute any necessary tax forms to accomplish this purpose.

7. CHILDREN'S COLLEGE EDUCATION:

With respect to the issue of college education, the Court finds from the evidence that there is a basis for the award of college support for the benefit of the minor children. The Court further finds that evidence was presented to the Court regarding anticipated expenses of a college education, the parties' and children's financial resources, the minor children's commitment to and aptitude for the requested education, the standard of living children would have enjoyed had the family unit not been separated by divorce, the children's relationship with the parents and responsiveness to parental guidance.

The Husband shall provide and pay for 100% of tuition, room and board, fees, and book expenses of undergraduate college education for the children. It is noted that Husband has created trusts for each child with a present cash balance in excess of $100,000 respectively. Said trusts are to be first utilized to defray each child's expenses for a college education. It is anticipated that the trusts will meet each child's full monetary needs for college.

The Wife shall insure that the Husband receives a copy of children's grades and other academic progress reports, as well as copies of all invoices, bills, statements, or other documents reflecting the required financial contribution.

8. HEALTH INSURANCE AND MEDICAL NEEDS:

The Husband shall provide and maintain sufficient medical hospitalization insurance to cover or pay all (subject to reasonable deductibles and co-payments) medical, drug and clinic or hospital charges incurred for the benefit of the minor

children. The Husband shall provide proof of the existence of said coverage to Wife within thirty (30) days of the Final Judgment of Divorce and furnish appropriate cards for Wife's use.

All reasonable and necessary medical expenses of the minor children which are not covered by insurance shall be paid by the Husband including, but not limited to, hospital, doctor, dental, orthodontic, optical care, prescription drugs, counselling and other medically related expenses.

9. CHILDREN'S TRUSTS:

Husband shall have full authority, to the extent permited by said trust instruments, to maintain the children's trusts in their present status or to make any changes he deems necessary.

10. REAL PROPERTY AND CONTENTS:

The Wife is awarded the marital residence located at 1112 Mountain Road, and all contents, except the watermelon painting by Mark Singer, which is hereby awarded to the Husband. The Husband shall convey to the Wife all of his right, interest in and to this real estate by Quitclaim deed. The Wife shall be solely responsible for and assume and pay, as the same matures, the mortgage indebtedness on said property and shall indemnify and hold the Husband harmless from any liability in connection with the mortgage debt.

The Husband is awarded the residence located at 5 Highland Manor, and all contents located therein. The Husband shall be solely responsible for and assume and pay, as the same matures, the mortgage

indebtedness on said property and shall indemnify and hold the Wife harmless from any liability in connection with the mortgage debt .

PERSONAL PROPERTY, BANK ACCOUNTS/BROKERAGE ACCOUNTS, RETIREMENT ACCOUNTS, ETC.

11. The Husband is awarded all right, title, and interest in and to HealthSouth Surgery Center, TASC 96 LLC, Electronic Consumer Coupons, and Tuscaloosa Ear, Nose & Throat, Inc. The Husband shall be solely responsible for and assume and pay, as the same matures, any indebtedness on said businesses and shall indemnify and hold the Wife harmless from any liability in connection with same.

12. The Husband is vested with all right, title, and interest in and to the 1995 Ford Explorer and the Wife is divested of any and all interest she may have therein. The Wife shall execute any and all documents necessary to transfer title to the Husband.

The Husband is further vested with all of his clothes, jewelry, and other personal items and effects.

13. The Wife is vested with all right, title, and interest in and to the 1992 Oldsmobile Van and the Husband is divested of any and all interest he may have therein. The Husband shall execute any and all documents necessary to transfer title to the Wife.

The Wife is further vested with all her clothes, jewelry, and other personal items and effects.

14. The Wife is vested with all right, title and interest in and to the following bank accounts, stocks, retirement plans, and the Husband is divested of any right,

title or interest therein:

(a) Regions Bank checking account in her name.

(b) Merrill Lynch account in both names containing $8,388 per Plaintiff's Exhibit #11.

(c) AmSouth Bancorp stock in both names.

(d) Stock accounts at Merrill Lynch (AT&T, BellSouth, SouthTrust, USX Marathon Group, USX US Steel, Winn Dixie) in her name.

(e) Mutual Discovery Fund in her name.

(f) Mutual European Fund CL Z in her name.

(g) Retirement Account - one-half (1/2) of the TENT Pension Plans as of the date of the filing of the divorce. The Court reserves jurisdiction to enter a Qualified Domestic Relations Order at such time that one is presented to the Court.

(h) The attorneys for Wife are hereby instructed to prepare and submit to the Court an appropriate QDRO order to accomplish this division.

(i) Any other accounts or investments in her own name.

15. The Husband is vested with all right, title and interest in and to the following bank accounts, stocks, retirement plans, and other investments, and the Wife is divested of any right, title or interest therein:

(a) Southeastern Financial, Inc. stock.

(b) Regions Bank checking account in his name.

(c) SouthTrust Bank checking account in his name.

(d) Merrill Lynch account in joint names containing $342.00 per Plaintiff's Exhibit #11.

(e) Mutual Discovery Fund in his name.

(f) Mutual European Fund CL Z in his name.

(g) Northeast Investors Trust in his name.

(h) Retirement Account Northeast Investors Trust in his name.

(i) Retirement Account -Vanguard Index Trust in his name.

(j) Retirement Account T. Rose Price International Stock Fund in his name.

(k) Retirement Account -GAM Funds, Inc. in his name.

(l) Retirement Account -Guinness Flight China in his name.

(m) Retirement Account -one-half (1/2) of the TENT Pension Plans as of the date of the filing of the divorce.

(n) Any other accounts or investments in his own name.

16. All items of personal or real property currently in the Husband's name or belonging solely to him or currently in his possession (except as otherwise specifically referred to in this Order), including without limitation, cash, bank accounts, clothing, jewelry, clothing accessories, securities, retirement plans, business interests, partnerships, insurance policies, books and the like, shall be his sole property.

17. All items of personal or real property currently in the Wife's name or belonging solely to her or currently in her possession (except as otherwise

specifically referred to in this Order), including without limitation, cash, bank accounts, clothing, jewelry, clothing accessories, securities, retirement plans, business interests, partnerships, insurance policies, books and the like, shall be her sole property.

INSURANCE

18. The Husband shall provide life insurance on his life and all premiums due thereon to keep in full force and effect policy or policies naming the children as irrevocable beneficiaries thereon in the amount of $300,000.00 for each child. The Husband shall in no way encumber or otherwise cause the death beneficiaries to be reduced to an amount less than $300,000.00 for each child. Should the Husband fail to provide said life insurance as ordered or should said life insurance lapse, then the equivalent amount shall be charged against the Husband's estate in favor of the children. The Husband shall have the obligation to maintain said life insurance policies naming the children as irrevocable beneficiaries for so long as he is required to pay child support or otherwise provide for the post-secondary education of the children.

19. The Husband shall provide life insurance on his life and pay all premiums due thereon to keep in full force and effect policy or policies naming the wife as irrevocable beneficiary thereon in the amount of at least $375,000.00. The Husband shall in no way encumber or otherwise cause the death benefits to be reduced to an amount less than $375,000.00. Should the Husband fail to provide said life insurance as ordered or should said insurance lapse, then the equivalent amount shall be charged against Husband's estate in favor of the Wife. The Husband shall be

required to maintain said insurance until such time as he has no legal obligation to pay periodic alimony or alimony in gross.

20 The Wife shall provide life insurance on her life and pay all premiums due thereon to keep in full force and effect policy or policies naming the children as irrevocable beneficiaries thereon in the amount of at least $100,000.00 for each child. The Wife shall in no way encumber or otherwise cause the death benefits to be reduced to an amount less than $100,000.00 for each child. Should the Wife fail to provide said life insurance as ordered or should said life insurance lapse, then the equivalent amount should be a charge against the Wife's estate in favor of the children. The Wife shall be required to maintain said insurance until such time as each child reaches nineteen (19) years of age.

21. Each party shall be vested with all policies of life insurance they currently own subject to the requirement set out hereinabove.

22. <u>PERIODIC ALIMONY</u>:

The Husband shall pay to Wife as periodic alimony the sum of THREE THOUSAND THREE HUNDRED FIFTY Dollars ($3,350.00) per month for a period of thirty-six (36) months. Thereafter, the Husband shall pay to the Wife as periodic alimony the sum of TWO THOUSAND EIGHT HUNDRED FIFTY Dollars ($2,850.00) per month for an additional period of ninety-six (96) months. At the expiration of one hundred twenty-six (126) months, the issue of periodic alimony shall be reserved. The Husband's obligation herein shall terminate upon the first to occur of the

following events: The Wife's death, the Husband's death, the Wife's remarriage, the Wife's commission of those acts contemplated in Section 30-2-55, Code of Alabama 1975, as amended, the expiration of the times set out above, or as otherwise provided by law.

Also, to further aid in Wife's re-entry into the work place Husband shall make a one-time lump sum payment of additional periodic alimony in the amount of $6,500.00. This payment shall be made on or before January 1, 1998.

23. HEALTH INSURANCE FOR WIFE:

As additional periodic alimony, Husband shall provide Wife continued health insurance premiums for thirty-six (36) months, as allowed by the federal COBRA statute. Such premium payments shall be considered as additional periodic alimony and shall be deductible to the Husband for federal and state income tax purposes and shall be included as income to the Wife for federal and state income tax purposes, and shall terminate earlier than thirty-six (36) months in the event of the occurrence of an event as set out above which terminates Husband's obligation to pay periodic alimony.

24. ALIMONY IN GROSS –PROPERTY SETTLEMENT:

The Husband shall pay to the Wife as alimony in gross the lump sum of ONE HUNDRED THOUSAND Dollars ($100,000.00). Said lump sum payment shall be made as follows: TWENTY-FIVE THOUSAND Dollars ($25,000.00) shall be paid on or before December 31, 1997; TWENTY-FIVE THOUSAND Dollars ($25,000.00) shall be paid on or before June 15, 1998; TWENTY-FIVE THOUSAND Dollars ($25,000.00) shall be paid on or before December 31, 1998; and TWENTY-FIVE THOUSAND Dollars ($25,000.00) shall be paid on or before June 15,

1999. These payments are to be treated as additional Property Settlement, not deductible to the Husband nor taxable to the Wife. Further, the obligation shall be non-modifiable, and shall be a debt due owing until paid in full, regardless of the marital status of the Wife. In the event of the Wife's death, any remaining payments would be due to her estate until all remaining payments would be due to her estate. Likewise, in the event of the Husband's death, his estate shall be obligated to pay to the Wife any remaining payments due to the Wife.

25. NECESSARY DOCUMENTS:

Each party is ordered and directed to execute all documents of any type that may be necessary or expedient for the consummation of the provisions of this judgment.

26. ATTORNEYS' FEES:

The Husband shall pay a portion of Wife's attorney's fees in the amount of $13,500.00. Wife is hereby awarded a judgment against Husband in said amount; however, no execution shall take place on said judgment unless the same is not paid in full, with any interest accrued thereon, within forty-three (43) days from the date of this judgment.

27. FEDERAL AND STATE INCOME TAXES:

Each party will share, on a pro-rata basis, any refund or liability owing on federal and state income tax returns filed during the years of their marriage through 1995. According to testimony at trial, the parties have agreed, through their respective attorneys, to file a joint return for 1996.

Husband shall hold Wife harmless for any liability due on the same and Husband shall be entitled to the full amount of any refund that might accrue on the 1996 return.

28. SITUS:

This Order shall be construed and governed in accordance with the laws of the State of Alabama.

29. PARTIAL INVALIDITY:

In the event any portion of this Order becomes invalid, the remaining terms shall remain in full force and effect.

30. SEPARATION:

The parties shall live separate and apart and hereafter they shall not harass, threaten, intimidate or otherwise act to embarrass or humiliate the other party or to berate or defame the other in the presence of any person.

31. COURT COSTS:

Court costs are taxed as paid.

DONE this the 20th day of October, 1997.

s/ Philip N. Lisenby
Philip N. Lisenby
Circuit Court Judge

Original – Court file

Hon. Donna W. Smalley
Attorney for Plaintiff

Hon. Kathryn McC. Harwood
Hon. Stephen r. Arnold
Attorneys for Defendant

The Printed Guidelines in Rule 32, for printing purposes only, were reduced to reflect only support amounts for up to three children. The forms associated with the rule were also omitted.

APPENDIX I

Judicial Administration Rule 32

WEST'S ALABAMA RULES OF COURT
ALABAMA RULES OF JUDICIAL ADMINISTRATION
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Current with amendments received through 5-1-2000.

RULE 32. CHILD SUPPORT GUIDELINES

Preface Relating to Scope. This rule, as amended effective October 4, 1993, shall apply to all new actions filed or proceedings instituted on or after October 4, 1993. Any actions or proceedings instituted before October 4, 1993, shall be governed by Rule 32 as it read before October 4, 1993.

(A) Child Support Guidelines Established. Guidelines for child support are hereby established for use in any action to establish or modify child support, whether temporary or permanent. There shall be a rebuttable presumption, in any judicial or administrative proceeding for the establishment or modification of child support, that the amount of the award which would result from the application of these guidelines is the correct amount of child support to be awarded. A written finding on the record indicating that the application of the guidelines would

be unjust or inappropriate shall be sufficient to rebut the presumption if the finding is based upon:

(i) A fair, written agreement between the parties establishing a different amount and stating the reasons therefor; or

(ii) A determination by the court, based upon evidence presented in court and stating the reasons therefor, that application of the guidelines would be manifestly unjust or inequitable.

(1) Reasons for Deviating From the Guidelines. Reasons for deviating from the guidelines may include, but are not limited to, the following:

(a) Shared physical custody or visitation rights providing for periods of physical custody or care of children by the obligor parent substantially in excess of those customarily approved or ordered by the court;

(b) Extraordinary costs of transportation for purposes of visitation borne substantially by one parent;

(c) Expenses of college education incurred prior to a child's reaching the age of majority;

(d) Assets of, or unearned income received by or on behalf of, a child or children; and

(e) Such other facts or circumstances that the court finds contribute to the best interest of the child or children for whom support is being determined. The existence of one or more of the reasons enumerated in this section does not require the court to deviate from the guidelines, but such reason or reasons may be considered in deciding whether to deviate from the guidelines. The court may deviate from the guidelines even if no reason enumerated in this section exists, if evidence of other reasons justifying deviation is presented.

(2) Stipulations. Stipulations presented to the court shall be reviewed by the court before

approval. No hearing shall be required; however, the court shall use the guidelines in reviewing the adequacy of child support orders negotiated by the parties and shall review income statements that fully disclose the financial status of the parties. The court, however, may accept from the parties and/or their attorneys of record a Child Support Guidelines Notice of Compliance that indicates compliance with this rule or, in the event the child support guidelines have not been met, the reason for the deviation therefrom. The form, content, and numbering scheme of the Child Support Guidelines Notice of Compliance shall be prescribed by the administrative director of courts (ADC). (See Form CS-43 following this rule.)

(3) Modifications. The child support guidelines shall be used by the parties as the basis for periodic updates of child support obligations.

(a) The provisions of any judgment respecting child support shall be modified only as to installments accruing after the filing of the petition for modification.

(b) There shall be a rebuttable presumption that child support should be modified when the difference between the existing child support award and the amount determined by application of these guidelines varies more than ten percent (10%), unless the variation is due to the fact that the existing child support award resulted from a rebuttal of the guidelines and there has been no change in the circumstances that resulted in the rebuttal of the guidelines.

(4) Health Care Needs. All orders establishing or modifying child support shall, at a minimum, provide for the children's health care needs through health insurance coverage or other means. Normally, health insurance covering the children should be required if it is available to either parent

through his or her employment or pursuant to any other group plan at a reasonable cost.

(B) Definitions.

(1) Income. For purposes of the guidelines established by this rule, "income" means actual gross income of a parent, if the parent is employed to full capacity, or the actual gross income the parent has the ability to earn if the parent is unemployed or underemployed.

(2) Gross Income.

(a) "Gross income" includes income from any source, and includes, but is not limited to, salaries, wages, commissions, bonuses, dividends, severance pay, pensions, interest, trusts, annuities, capital gains, Social Security benefits, workers' compensation benefits, unemployment insurance benefits, disability insurance benefits, gifts, prizes, and preexisting periodic alimony.

(b) "Gross income" does not include child support received for other children or benefits received from means-tested public assistance programs, including, but not limited to, Aid to Families with Dependent Children, Supplemental Security Income, food stamps, and general assistance.

(3) Self-Employment Income.

(a) For income from self-employment, rent, royalties, proprietorship of business, or joint ownership of a partnership or closely held corporation, "gross income" means gross receipts minus ordinary and necessary expenses required to produce such income, as allowed by the Internal Revenue Service, with the exceptions noted in section (B)(3)(b).

(b) "Ordinary and necessary expenses" does not include amounts allowable by the Internal Revenue Service for the accelerated component of depreciation expenses, investment tax credits, or any other business expenses determined by

the court to be inappropriate for determining gross income for purposes of calculating child support.

(4) Other Income. Expense reimbursements or in-kind payments received by a parent in the course of employment, self-employment, or operation of a business shall be counted as income if they are significant and reduce personal living expenses.

(5) Unemployment; Underemployment. If the court finds that either parent is voluntarily unemployed or underemployed, it shall estimate the income that parent would otherwise have and shall impute to that parent that income; the court shall calculate child support based on that parent's imputed income. In determining the amount of income to be imputed to a parent who is unemployed or underemployed, the court should determine the employment potential and probable earning level of that parent, based on that parent's recent work history, education, and occupational qualifications, and on the prevailing job opportunities and earning levels in the community. The court may, in its discretion, take into account the presence of a young or physically or mentally disabled child necessitating the parent's need to stay in the home and therefore the inability to work.

(6) Preexisting Child Support Obligation. The amount of child support actually being paid by a parent pursuant to an order for support of other children shall be deducted from that parent's "gross income." If a parent is legally responsible for and is actually providing support for other children, but not pursuant to an order of support, a deduction for an "imputed preexisting child support obligation" may be made from that parent's gross income. The imputed preexisting child support obligation shall be that amount specified in the schedule of basic child support obligations based on that parent's unadjusted

gross income and the number of other children for whom that parent is legally responsible. "Other children" means children who are not the subject of the particular child support determination being made. If the proceeding is one to modify an existing award of support, no deduction should be made for other children born or adopted after the initial award of support was entered, except for support paid pursuant to another order of support.

(7) Health Insurance Premiums.

(a) The actual cost of a premium to provide health insurance benefits for the children shall be added to the "basic child support obligation" and shall be divided between the parents in proportion to their adjusted gross income in the percentages indicated on the Child Support Guidelines form (Form CS- 42).

(b) The amount to be added to the "basic child support obligation" shall be the actual amount of the total insurance premium for family/dependent coverage, regardless of whether all children covered are in the same family.

(c) After the "total child support obligation" is calculated and divided between the parents in proportion to their "monthly adjusted gross income," the amount added pursuant to subsection (b) shall be deducted from the obligor's share of the total child support obligation, provided the obligor actually pays said premium. If the obligee is actually paying the premium, no further adjustment is necessary.

(d) If, at any time while a child support order providing for an insurance adjustment is in effect, such insurance coverage is allowed to lapse, is terminated, or otherwise no longer covers the children for whose benefit the order was issued, the court (i) may find the amount deducted from the obligor's child support obligation therefor to be an

arrearage in the obligor's total child support obligation; (ii) may find the obligor liable for medical expenses that would otherwise have been covered under the insurance; and/or (iii) enter such other order as it shall deem appropriate.

(8) Child Care Costs. Child care costs, incurred on behalf of the children because of employment or job search of either parent, shall be added to the "basic child support obligation." Child care costs shall not exceed the amount required to provide care from a licensed source for the children, based on a schedule of guidelines developed by the Department of Human Resources. Before the Department of Human Resources implements any revision to the schedule of child care cost guidelines, it shall provide the ADC a copy of the revised schedule. The ADC shall, as soon as reasonably practicable thereafter, disseminate the revised schedule to all judges, all circuit, district, and juvenile court clerks and registers, and the Family Law Section of the Alabama State Bar. The clerk or register shall maintain the current schedule in his/her office, shall make it available for review, and shall provide copies of it on request, at the customary cost for copies of documents.

(9) Split Custody. In those situations where each parent has primary physical custody of one or more children, support shall be computed in the following manner:

(a) Compute the support the father would owe to the mother for the children in her custody as if they were the only children of the two parties; then

(b) Compute the support the mother would owe to the father for the children in his custody as if they were the only children of the two parties; then

(c) Subtract the lesser support obligation from the greater. The parent who owes the greater obligation should be ordered to pay the difference in support to the other parent, unless the court determines, pursuant to other provisions of this rule, that it should deviate from the guidelines.

(C) Determination of Recommended Child Support Obligation.

(1) Basic Child Support Obligation. The basic child support obligation shall be determined by using the schedule of basic child support obligations. The category entitled "combined gross income" in the schedule means the combined monthly adjusted gross incomes of both parents. "Adjusted gross income" means gross income less preexisting child support obligations and less preexisting periodic alimony actually paid by a parent to a former spouse. For combined gross income amounts falling between amounts shown in the schedule, the lower value shall be used if the combined gross income falls less than halfway between the amounts shown in the schedule. Where the combined gross income falls halfway or more than halfway between two amounts, the higher value shall be used. The category entitled "number of children due support" in the schedule means children for whom the parents share joint legal responsibility and for whom support is being sought. The court may use its discretion in determining child support in circumstances where combined adjusted gross income is below the lowermost levels or exceeds the uppermost levels of the schedule.

(2) Computation of Child Support. A total child support obligation is determined by adding the basic child support obligation, work-related child care costs, and health insurance costs. The total child support obligation shall be divided between the parents in proportion to their adjusted gross incomes.

The obligation of each parent is computed by multiplying the total child support obligation by each parent's percentage share of their combined adjusted gross income. The custodial parent shall be presumed to spend his or her share directly on the child.

(3) Rounding. All dollar amounts used in child support calculations under this rule, including the recommended child support order, may be rounded to the nearest dollar, and all percentages may be rounded to the nearest one percent.

(4) Additional Awards for Child Support. In addition to the recommended child support order, the court may make additional awards for extraordinary medical, dental, and educational expenses if (i) the parties have in writing agreed to such awards or (ii) the court, upon reviewing the evidence, determines that such awards are in the best interest of the children and states its reasons for making such additional awards.

(D) Schedule of Basic Child Support Obligations. A schedule of basic child support obligations appears as an appendix to this Rule 32.

(E) Standardized Child Support Guidelines Form, Child Support Obligation Income Statement/Affidavit Form, and Child Support Guidelines Notice of Compliance Form. A standardized Child Support Guidelines form and a Child Support Obligation Income Statement/Affidavit form shall be filed in each action to establish or modify child support obligations and shall be of record and shall be deemed to be incorporated by reference in the court's child support order. In conformance to Section (A)(2) of this Rule, in stipulated cases the court may accept the filing of a Child Support Guidelines Notice of Compliance form. The form, content, and numbering schemes of the Child Support guidelines form, the Child Support Obligation Income Statement/Affidavit

form, and the Child Support Guidelines Notice of Compliance form shall be prescribed by the ADC.

Publisher's Note

In Martin v. Martin, 637 So.2d 901, the Alabama Court of Civil Appeals announced its policy to immediately remand jurisdiction of a child support case temporarily back to the trial court, or to reverse the judgment and remand the case for further proceedings to comply with Rule 32 of the Alabama Rules of Judicial Administration, when the record does not reflect compliance with Rule 32(E) and child support is made an issue on appeal.

(F) Income Statements. Income statements of the parents shall be verified with documentation of both current and past earnings. Suitable documentation of current earnings includes pay stubs, employer statements, or receipts and expenses if self-employed. Documentation of current earnings shall be supplemented with copies of the most recent tax return to provide verification of earnings over a longer period or shall be supplemented with such other documentation as the court directs. Intentional falsification of information presented on the Child Support Obligation Income Statement/Affidavit form shall be deemed contempt of court. Documentation of earnings used in preparing the Child Support Obligation Income Statement/Affidavit form shall be maintained by the parties and made available as directed by the court.

(G) Review of Child Support Guidelines. The ADC shall, at least once every four years, review the child support guidelines and the schedule of basic child support obligations, to ensure that their application results in appropriate child support

determinations. If the ADC determines that no change is required in the guidelines or in the schedule, the ADC shall so advise the Supreme Court.

[Adopted effective October 1, 1987; amended effective October 9, 1989; October 4, 1993.]

Comment

(As amended to conform to amendments effective October 4, 1993)

Rule 32 establishes guidelines as a rebuttable presumption for the ordering of child support awards. These guidelines were adopted in response to requirements set forth in the Child Support Enforcement Amendments of 1984 (P.L. 98-378) and the Family Support Act of 1988 (P.L. 100-485). The guidelines will provide an adequate standard support for children, subject to the ability of their parents to pay, and will make awards more equitable by ensuring more consistent treatment of persons in similar circumstances.

These guidelines are based on the income shares model developed by the National Center for State Courts and are founded on the premise that children should not be penalized as a result of the dissolution of the family unit but should continue to receive the same level of support that would have been available to them had the family unit remained intact. Under the guidelines, attorneys for the plaintiff and defendant will be required to submit a Child Support Guidelines form and Child Support Obligation Income Statement/Affidavit form in each action to establish or modify child support. The Child Support Guidelines form will set forth the combined income available to the family unit, the basic child support obligation as

determined from the Schedule of Basic Child Support Obligations (Appendix to Rule 32), and adjustments to the basic obligation for work-related child care expenses and health insurance premiums. A portion of the adjusted total child support obligation is then ascribed to each parent based on his/her percentage share of the combined family income. The Child Support Guidelines form sets forth the recommended child support obligation for the noncustodial parent, which includes an adjustment for the cost of the health insurance premium if such a premium is paid by the noncustodial parent. The guidelines assume that the custodial parent will directly provide his/her proportionate share of support to the children. In addition to the recommended child support obligation, the court may make additional awards for extraordinary medical, dental, and educational expenses if the court finds such awards to be in the children's best interest or if the parents have agreed to such awards.

The Schedule of Basic Child Support Obligations was developed through research sponsored by the National Center for State Courts and is based on extensive economic research on the cost of supporting children at various income levels. This schedule is based on gross income and has been adjusted for Alabama's income distribution relative to the U.S. income distribution. It also incorporates the 1987 federal income tax provisions as well as the withholding schedule for Alabama state income tax. Other assumptions incorporated in the Schedule of Basic Child Support Obligations include:

(1) Tax Exemptions. The Schedule of Basic Child Support Obligations assumes that the custodial parent will take the federal and state income tax exemptions for the children in his or her custody;

(2) Health Care Costs. In respect to health

care costs, the Schedule of Basic Child Support Obligations assumes unreimbursed medical costs of $200 per family of four per year. These assumed costs include medical expenses not covered or reimbursed by health insurance or Medicaid or Medicare; and

(3) Visitation. The Schedule of Basic Child Support Obligations is premised on the assumption that the noncustodial parent will exercise customary visitation rights, including summer visitation. Any abatement of child support because of extraordinary visitation should be based on visitation in excess of customary visitation. The schedule of basic child support obligations includes combined gross incomes ranging from $550 to $10,000 a month. Rule 32(C)(1) provides that the court may use its discretion in determining child support where the combined adjusted gross income is below the lowermost levels or above the uppermost levels of the schedule. To further the consistency of awards, a court may wish to issue an order establishing minimum child support obligations for combined adjusted gross incomes of less than $550. Where the combined adjusted gross income exceeds the uppermost limit of the schedule, the amount of child support should not be extrapolated from the figures given in the schedule, but should be left to the discretion of the court.

Rule 32(B)(8) provides an adjustment for work-related child care costs, provided such costs do not exceed those on the schedule of guidelines for licensed child care costs published by the Alabama Department of Human Resources (DHR). The rule requires that copies of the DHR schedule of guidelines for child care costs be available through the office of the clerk or register of each court where child support actions are filed. Copies of the schedule of guidelines for child care costs should also be available in the county offices of the Department of Human Resources.

The Alabama child support guidelines do not specifically address the problem of establishing a support order in joint legal custody situations. Such a situation may be considered by the court as a reason for deviating from the guidelines in appropriate situations, particularly if physical custody is jointly shared by the parents. Shared physical custody, regardless of "legal custodial arrangements," is an appropriate reason for deviation, Section (A)(1)(a). "Shared physical custody" refers to that situation where the physical placement is shared by the parents in such a manner as to assure the child frequent and continuing contact and time with both parents. Because of the infinite possibilities that exist in terms of time spent with each parent and other considerations associated with such custody, a determination of support is to be made on a case-by-case basis and is left to the sound discretion of the trial court, to be based on findings made at or after trial or upon a fair written agreement of the parties. When a shared physical custody situation results in a support award that deviates from the award that would result from application of the guidelines, the trial court's order, or the written agreement of the parties, must specify and explain the reason for the deviation.

The guidelines also do not address the problem of subsequent children or families. While no deduction may be made for children born or adopted after an initial award of support, unless made pursuant to another order of support or as otherwise provided in this rule, a court may consider evidence of support provided by a party for after-born or adopted children offered in an attempt to rebut the guidelines' presumptions. See Loggins v. Houk, 595 So.2d 488 (Ala.Civ.App.1991).

The Schedule of Basic Child Support Obligations assumes that a family of four will have approximately $200 in unreimbursed medical expenses each year. In providing for the payment of deductibles and/or other noncovered medical expenses by the parties, it should be assumed that those expenses are in excess of this amount. Courts and parties may wish to consider whether noncovered medical and/or dental expenses should be allocated in the same percentages as the health insurance premiums are allocated pursuant to this rule and as entered on the Child Support Guidelines form (Form CS-42).

When provisions for payment of a health insurance premium are made as provided in Rule 32, the court, or the parties drafting an agreement, should also consider requiring proof that the children have been enrolled in the health insurance plan and proof of the actual cost of dependent coverage. The court should, in its order of child support, require the parent providing dependent insurance coverage to submit annually proof of continued coverage to the other parent, the court, or the designated child support enforcement agency, and should further require provision of an identification card or other evidence of insurance sufficient for the children to be afforded benefits of such insurance coverage by service providers.

The Supreme Court's Advisory Committee on Child Support Guidelines and Enforcement, which assisted in drafting this rule, has recommended that child support obligations be determined before the court considers spousal support or other obligations.

APPENDIX TO RULE 32

SCHEDULE OF BASIC CHILD SUPPORT OBLIGATIONS

Combined Gross Income	One Child	Two Children	Three Children
Below 550.00	Monthly Basic Child Support Obligation Established at the Discretion of the Court		
550.00	50	51	51
600.00	82	83	84
650.00	112	113	114
700.00	141	142	144
750.00	151	172	173
800.00	158	201	203
850.00	166	230	233
900.00	173	259	262
950.00	180	279	291
1000.00	187	290	320
1050.00	194	301	350
1100.00	201	312	379
1150.00	208	323	405
1200.00	215	334	418
1250.00	222	345	432
1300.00	229	356	445
1350.00	236	367	459
1400.00	243	378	474
1450.00	251	390	488

1500.00	257	399	500
1550.00	263	409	512
1600.00	269	418	524
1650.00	275	428	536
1700.00	281	437	548
1750.00	287	447	560
1800.00	294	456	571
1850.00	300	466	583
1900.00	306	475	595
1950.00	312	485	607
2000.00	318	495	619
2050.00	325	505	632
2100.00	331	514	644
2150.00	338	524	656
2200.00	344	534	669
2250.00	350	544	681
2300.00	357	554	694
2350.00	363	563	705
2400.00	368	572	716
2450.00	374	580	727
2500.00	380	589	738
2550.00	386	598	749
2600.00	391	607	760
2650.00	397	616	771
2700.00	403	625	782
2750.00	409	633	793
2800.00	414	642	804
2850.00	420	651	815

2900.00	426	660	826
2950.00	431	669	837
3000.00	437	677	848
3050.00	443	686	859
3100.00	449	695	870
3150.00	454	704	881
3200.00	459	712	891
3250.00	464	720	901
3300.00	469	728	911
3350.00	475	736	922
3400.00	480	745	932
3450.00	485	753	942
3500.00	490	761	952
3550.00	495	769	962
3600.00	500	777	972
3650.00	505	785	982
3700.00	511	794	994
3750.00	517	803	1005
3800.00	523	813	1017
3850.00	529	822	1028
3900.00	534	831	1040
3950.00	540	840	1051
4000.00	546	849	1063
4050.00	552	858	1074
4100.00	558	868	1085
4150.00	563	877	1097
4200.00	569	886	1108
4250.00	575	895	1120
4300.00	581	904	1131

4350.00	587	913	1143
4400.00	592	923	1154
4450.00	598	931	1159
4500.00	604	940	1170
4550.00	609	948	1180
4600.00	614	956	1190
4650.00	619	964	1200
4700.00	624	972	1209
4750.00	629	980	1219
4800.00	635	987	1229
4850.00	640	995	1239
4900.00	645	1003	1249
4950.00	650	1011	1258
5000.00	655	1019	1268
5050.00	660	1027	1278
5100.00	665	1035	1288
5150.00	670	1042	1298
5200.00	675	1050	1307
5250.00	681	1058	1317
5300.00	686	1066	1327
5350.00	691	1074	1337
5400.00	696	1082	1346
5450.00	701	1090	1356
5500.00	706	1097	1366
5550.00	711	1105	1376
5600.00	716	1113	1386
5650.00	722	1121	1395
5700.00	727	1129	1405
5750.00	732	1137	1415

5800.00	737	1145	1425
5850.00	742	1152	1435
5900.00	747	1160	1444
5950.00	752	1168	1454
6050.00	762	1184	1474
6100.00	768	1192	1483
6150.00	772	1198	1497
6200.00	775	1203	1504
6250.00	779	1209	1511
6300.00	783	1214	1518
6350.00	787	1220	1526
6400.00	790	1226	1533
6450.00	794	1231	1540
6500.00	798	1237	1547
6550.00	802	1243	1554
6600.00	805	1248	1561
6650.00	809	1254	1568
6700.00	813	1259	1575
6750.00	817	1265	1582
6800.00	820	1271	1589
6850.00	824	1276	1597
6900.00	828	1282	1604
6950.00	831	1287	1611
7000.00	835	1293	1618
7050.00	839	1299	1625
7100.00	843	1304	1632
7150.00	846	1310	1639
7200.00	850	1315	1646
7250.00	854	1321	1653

7300.00	857	1326	1660
7350.00	860	1331	1666
7400.00	862	1336	1672
7450.00	865	1340	1678
7500.00	868	1345	1684
7550.00	871	1350	1690
7600.00	874	1355	1696
7650.00	877	1359	1702
7700.00	879	1364	1708
7750.00	882	1369	1714
7800.00	885	1374	1720
7850.00	888	1378	1726
7900.00	891	1383	1732
7950.00	894	1388	1738
8000.00	896	1393	1744
8050.00	899	1397	1750
8100.00	902	1402	1756
8150.00	905	1407	1762
8200.00	908	1412	1768
8250.00	911	1417	1774
8300.00	914	1421	1780
8350.00	916	1426	1785
8400.00	919	1431	1792
8450.00	922	1434	1797
8500.00	924	1438	1801
8600.00	929	1445	1810
8650.00	931	1448	1815
8700.00	933	1452	1819
8750.00	935	1455	1823

8800.00	938	1459	1828
8850.00	940	1462	1832
8900.00	942	1466	1837
8950.00	945	1469	1841
9000.00	947	1473	1846
9050.00	949	1476	1850
9100.00	951	1480	1854
9150.00	954	1483	1859
9200.00	956	1487	1863
9250.00	958	1490	1868
9300.00	961	1494	1872
9350.00	963	1497	1876
9400.00	965	1501	1881
9450.00	967	1504	1885
9500.00	970	1507	1890
9550.00	972	1511	1894
9600.00	974	1514	1898
9650.00	977	1518	1903
9700.00	979	1521	1907
9750.00	981	1525	1912
9800.00	983	1528	1916
9850.00	986	1532	1921
9900.00	988	1535	1925
9950.00	990	1539	1929
10000.00	992	1542	1934

APPENDIX J

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***CURRENT THROUGH P.L 107-15,
APPROVED 6/5/01***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
SENTENCING GUIDELINES FOR
THE UNITED STATES COURTS.
18 USCS APPENDIX CHAPTER ONE.
INTRODUCTION AND GENERAL
APPLICATION PRINCIPALS
PART A. INTRODUCTION

18 USCS Appx § 2 (2001)

§ 2. The Statutory Mission

The Sentencing Reform Act of 1984 (Title II of the Comprehensive Crime Control Act of 1984) provides for the development of guidelines that will further the basic purposes of criminal punishment: deterrence, incapacitation, just punishment, and rehabilitation. The Act delegates broad authority to the Commission to review and rationalize the federal sentencing process.

The Act contains detailed instructions as to how this determination should be made, the most important of which directs the Commission to create categories of offense behavior and offender characteristics. An offense behavior category might consist, for example, of "bank robbery/committed with a gun/$2500 taken." An offender characteristic category might be "offender

with one prior conviction not resulting in imprisonment." The Commission is required to prescribe guideline ranges that specify an appropriate sentence for each class of convicted persons determined by coordinating the offense behavior categories with the offender characteristic categories. Where the guidelines call for imprisonment, the range must be narrow: the maximum of the range cannot exceed the minimum by more than the greater of 25 percent or six months. 28 U.S.C. § 994(b)(2).

Pursuant to the Act, the sentencing court must select a sentence from within the guideline range. If, however, a particular case presents atypical features, the Act allows the court to depart from the guidelines and sentence outside the prescribed range. In that case, the court must specify reasons for departure. 18 U.S.C. § 3553(b). If the court sentences within the guideline range, an appellate court may review the sentence to determine whether the guidelines were correctly applied. If the court departs from the guideline range, an appellate court may review the reasonableness of the departure. 18 U.S.C. § 3742. The Act also abolishes parole, and substantially reduces and restructures good behavior adjustments.

The Commission's initial guidelines were submitted to Congress on April 13, 1987. After the prescribed period of Congressional review, the guidelines took effect on November 1, 1997, and apply to all offenses committed on or after that date. The Commission has the authority to submit guideline amendments each year to Congress between the beginning of a regular Congressional session and May 1. Such amendments automatically take effect 180 days after submission unless a law is enacted to the contrary. 28 U.S.C. § 994(p).

The initial sentencing guidelines and policy statements were developed after extensive hearings, deliberation, and consideration of substantial public comment. The Commission emphasizes, however, that it views the guideline-writing process as evolutionary. It expects, and the governing statute anticipates, that continuing research, experience, and analysis will result in modifications and revisions to the guidelines through submission of amendments to Congress. To this end, the Commission is established as a permanent agency to monitor sentencing practices in the federal courts.

APPENDIX K

18 USCS Appx § 3

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*** CURRENT THROUGH P.l. 107-15,
APPROVED 6/5/01 ***

TITLE 18. CRIMES AND CRIMINAL PROCEDURE
SENTENCING GUIDELINES FOR
THE UNITED STATES COURTS.
18 USCS APPENDIX CHAPTER ONE
INTRODUCTION AND GENERAL APPLICATION
PRINCIPLES PART A. INTRODUCTION

18 USCS Appx § 3 (2001)

§ 3. The Basic Approach (Policy Statement)

To understand the guidelines and their underlying rationale, it is important to focus on the three objectives that Congress sought to achieve the Sentencing Reform Act of 1984. The Act's basic objective was to enhance the ability of the criminal justice system to combat crime through an effective, fair sentencing system. To achieve this end, Congress sought honesty in sentencing. It sought to avoid the confusion and implicit deception that arose out of the pre-guidelines sentencing system which required the court to impose an indeterminate sentence of imprisonment and empowered the parole commission to determine how much of the sentence an offender actually would serve in prison. This practice usually resulted in a substantial reduction in the effective length of the sentence imposed, with defendants often serving only about one-third of the sentence imposed by the court.

Second, Congress ought reasonable uniformity in sentencing by narrowing the wide disparity in sentences imposed for similar criminal offenses committed by similar offenders. Third, Congress sought proportionality in sentencing through a system that imposes appropriately different sentences for criminal conduct of differing severity.

Honesty is easy to achieve: the abolition of parole makes the sentence imposed by the court the sentence the offender will serve, less approximately fifteen percent for good behavior. There is a tension, however, between the mandate of uniformity and the mandate of proportionality. Simple uniformity--sentencing every offender to five years--destroys proportionality. Having only a few simple categories of crimes would make the guidelines uniform and easy to administer, but might lump together offenses that are different in important respects. For example, a single category for robbery that included armed and unarmed robberies, robberies with and without injuries, robberies of a few dollars and robberies of millions, would be far too broad.

A sentencing system tailored to fit every conceivable wrinkle of each case would quickly become unworkable and seriously compromise the certainty of punishment and its deterrent effect. For example: a bank robber with (or without) a gun, which the robber kept hidden (or brandished), might have frightened (or merely warned), injured seriously (or less seriously), tied up (or simply pushed) a guard, teller, or customer, at night (or at noon), in an effort to obtain money for other crimes (or for other purposes), in the company of a few (or many) other robbers, for the first (or fourth) time.

The list of potentially relevant features of criminal behavior is long; the fact that they can occur in

multiple combinations means that the list of possible permutations of factors is virtually endless. The appropriate relationships among these different factors are exceedingly difficult to establish, for they are often context specific. Sentencing courts do not treat the occurrence of a simple bruise identically in all cases, irrespective of whether that bruise occurred in the context of a bank robbery or in the context of a breach of peace. This is so, in part, because the risk that such a harm will occur differs depending on the underlying offense with which it is connected; and also because, in part, the relationship between punishment and multiple harms is not simply additive. The relation varies depending on how much other harm has occurred. Thus, it would not be proper to assign points for each kind of harm and simply add them up, irrespective of context and total amounts.

The larger the number of subcategories of offense and offender characteristics included in the guidelines, the greater the complexity and the less workable the system. Moreover , complex combinations of offense and offender characteristics would apply and interact in unforeseen ways to unforeseen situations, thus failing to cure the unfairness of a simple, broad category system. Finally, and perhaps most importantly, probation officers and courts, in applying a complex system having numerous subcategories, would be required to make a host of decisions regarding whether the underlying facts were sufficient to bring the case within a particular subcategory. The greater the number of decisions required and the greater their complexity, the greater the risk that different courts would apply the guidelines differently to situations that, in fact, are similar, thereby reintroducing the very disparity that the guidelines were designed to reduce.

In view of the arguments, it would have been tempting to retreat to the simple, broad category approach and to grant courts the discretion to select the proper point along a broad sentencing range. Granting such broad discretion, however, would have risked correspondingly broad disparity in sentencing, for different courts may exercise their discretionary powers in different ways. Such an approach would have risked a return to the wide disparity that Congress established the Commission to reduce and would have been contrary to the Commission's mandate set forth in the Sentencing Reform Act of 1984.

In the end, there was no completely satisfying solution to this problem. The Commission had to balance the comparative virtues and vices of broad, simple categorization and detailed, complex subcategorization, and within the constraints established by that balance, minimize the discretionary powers of the sentencing court. Any system will, to a degree, enjoy the benefits and suffer from the drawbacks of each approach.

A philosophical problem arose when the Commission attempted to reconcile the differing perceptions of the purposes of criminal punishment. Most observers of the criminal law agree that the ultimate aim of the law itself, and of punishment in particular, is the control of crime. Beyond this point, however, the consensus seems to break down. Some argue that appropriate punishment should be defined primarily on the basis of the principle of "just deserts." Under this principle, punishment should be scaled to the offender's culpability and the resulting harms. Others argue that punishment should be imposed primarily on the basis of practical "crime control" considerations. This theory calls for sentences that most effectively lessen

the likelihood of future crime, either by deterring others or incapacitating the defendant.

Adherents of each of these points of view urged the Commission to choose between them and accord one primacy over the other. As a practical matter, however, this choice was unnecessary because in most sentencing decisions the application of either philosophy will produce the same or similar results.

In its initial set of guidelines, the Commission sought to solve both the practical and philosophical problems of developing a coherent sentencing system by taking an empirical approach that used as a starting point data estimating pre-guidelines sentencing practice. It analyzed data drawn from 10,000 presentence investigations, the differing elements of various crimes as distinguished in substantive criminal statutes, the United States Parole Commission's guidelines and statistics, and data from other relevant sources in order to determine which distinctions were important in pre-guidelines practice. After consideration, the Commission accepted, modified, or rationalized these distinctions.

This empirical approach helped the Commission resolve its practical problem by defining a list of relevant distinctions that, although of considerable length, was short enough to create a manageable set of guidelines. Existing categories are relatively broad and omit distinctions that some may believe important, yet they include most of the major distinctions that statutes and data suggest made a significant difference in sentencing decisions. Relevant distinctions not reflected in the guidelines probably will occur rarely and sentencing courts may take such unusual cases into account by departing from the guidelines.

The Commission's empirical approach also helped resolve its philosophical dilemma. Those who adhere to a just deserts philosophy may concede that the lack of consensus might make it difficult to say exactly what punishment is deserved for a particular crime. Likewise, those who subscribe to a philosophy of crime control may acknowledge that the lack of sufficient data might make it difficult to determine exactly the punishment that will best prevent that crime. Both groups might therefore recognize the wisdom of looking to those distinctions that judges and legislators have, in fact, made over the course of time. These established distinctions are ones that the community believes, or has found over time, to be important from either a just deserts or crime control perspective.

The Commission did not simply copy estimates of pre-guidelines practice as revealed by the data, even though establishing offense values on this basis would help eliminate disparity because the data represent averages. Rather, it departed from the data at different points for various important reasons. Congressional statutes, for example, suggested or required departure, as in the case of the Anti-Drug Abuse Act of 1986 that imposed increased and mandatory minimum sentences. In addition, the data revealed inconsistencies in treatment, such as punishing economic crime less severely than other apparently equivalent behavior.

Despite these policy-oriented departures from pre-guidelines practice, the guidelines represent an approach that begins with, and builds upon, empirical data. The guidelines will not please those who wish the Commission to adopt a single philosophical theory and then work deductively to establish a simple and perfect set of categorizations and distinctions. The guidelines may prove acceptable, however, to those

who seek more modest, incremental improvements in the status quo, who believe the best is often the enemy of the good, and who recognize that these guidelines are, as the Act contemplates, but the first step in an evolutionary process. After spending considerable time and resources exploring alternative approaches, the Commission developed these guidelines as a practical effort toward the achievement of a more honest, uniform, equitable, proportional, and therefore effective sentencing system.